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10/071,405

02/08/2002

Frans Andreas Gerritsen

NL010106

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05/18/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

TUCKER, WESLEY J

ART UNIT

PAPER NUMBER

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MAIL DATE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* Frans Andreas Gerritsen, Marcel Breeuwer, and  
Bert Leo Alfons Verdonck

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Application No. 10/071,405  
Technology Center 2600

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Mailed: [May 18, 2009]

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Before QUITA GOULD, *Supervisory Paralegal Specialist, Review Team*  
GOULD, *Supervisory Paralegal Specialist, Review Team*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on May 5, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

## **EXAMINER'S ANSWER**

### **I. HEADINGS**

A review of the file indicates that the Examiner's Answer filed on December 10, 2008 does not comply with the guidelines provided in MPEP § 1207.02 because it does not contain all of the required heading items. Specifically, the Examiner's Answer must contain the following heading items in the following order:

- (1) *Real party in interest.*
- (2) *Related appeals and interferences.*
- (3) *Status of claims.*
- (4) *Status of amendments After Final.*
- (5) *Summary of claimed subject matter.*
- (6) *Grounds of rejection to be reviewed on appeal.*
- (7) *Claims Appendix.*
- (8) *Evidence Relied Upon.*
- (9) *Grounds of Rejection.*
- (10) *Response to Argument.*
- (11) *Related Proceedings Appendix..*

An in-depth review of the Examiner's Answer indicates that the following section is missing from the Examiner's Answer mailed on December 10, 2008 and is not completed in setting forth agreement or disagreement with the Appeal Brief:

(1) Real party in interest

A substitute Examiner's Answer that is in compliance with the guidelines is required. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

## **II. STATUS OF AMENDMENTS**

A review of the file finds that the status of the amendments as provided in the Examiner's Answer mailed on December 10, 2008, under the heading "Status of Amendments" is not consistent with the last **entered** amendment of record in accordance with 37 CFR 41.37(c)(1)(iv).

A review of the file finds that an After Final Amendment was filed on June 16, 2008. An Advisory Action was mailed on July 2, 2008 notifying appellant that the **After Final Amendment will be entered**. However, Examiner's answer states that the status of the **After Final Amendment filed on June 16, 2008 has not been entered**. Correction of the status of amendment(s) filed subsequent to Final rejection is required.

## **III. EVIDENCE RELIED UPON**

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

....

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed on December 10, 2008, is deficient because the "Evidence Relied Upon" section fails to include the reference Han et al. (U.S. Patent 5,457,754) cited on page 3 in the Examiner's Answer's grounds of rejection of Claims 5 and 6 under 35 U.S.C. § 103 (a).

Appropriate correction is required.

### **CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to vacate the Examiner's Answer mailed on December 10, 2008;
- 2) to generate a new Examiner's Answer:

- (1) setting forth the correct status of the after final amendment, and to correct other sections of the Answer as may be required;

- (2) adding the "Real Party in Interest" heading in compliance with the guidelines provided in MPEP § 1207.02;

- (3) citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and

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3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/llw

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